(5)

SINGLE BENCH

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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) No.6820 /2006-S.B.

PETITIONER — Satish Kumar Pandey, aged about *41 years, S/o Akshay Kumar* Pandey, R/o Pandripani, Tahsil and District Raigarh

VERSUS

RESPONDENTS

1. The State of Chhattisgarh, *through Secretary, School* Education Department, D.K.S. Bhawan, Raipur.

2. ~~Avar Secretary,~~ School Education Department, D.K.S. Bhawan, Raipur

3. T.C. Patel S/o Motichand aged *about 57 years, R/o Village* Latesara, Tahsil Sakti Distt. Janjgir Champa

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P.R. No. 6944/06
Presented by V.K. Pandey
dated 1-12-06

WRIT PETITION UNDER ARTICLE 226/~~227~~ OF THE CONSTITUTION OF INDIA

(93)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) No. 6820 of 2006

PETITIONER : Satish Kumar Pandey.

VERSUS

RESPONDENTS : The State of Chhattisgarh & Others.

Post for order on 28th March, 2007

Sd/-
Satish K. Agnihotri
Judge

(94)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION (S) 6820 of 2006

PETITIONER : Satish Kumar Pandey, aged about 41 years, S/o Akshay Kumar Pandey, R/o Pandripani, Tahsil and District Raigarh.

VERSUS

RESPONDENTS : 1. The State of Chhattisgarh, through Secretary, School Education Department, D.K.S.Bhawan, Raipur.

2. Avar Secretary, School Education Department, D.K.S. Bhawan, Raipur.

3. T.C.Patel S/o Motichand aged about 57 years, R/o Village Latesara, Tahsil Sakti Distt. Janjgir Champa.

Present: Shri Vineet Kumar Pandey, Advocate for the petitioner.
Shri Sushil Dubey, Government Advocate for the State / respondent no. 1 and 2.
Shri Ramakant Pandey, Advocate for respondent no. 3.

ORDER
(Passed on 28th of March, 2007)

1. By this petition, the petitioner has challenged the legality and validity of the suspension order dated 28.11.2006 (Annexure P/11) passed by the Under Secretary, Government of Chhattisgarh, School Education Department. Further, the

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petitioner seeks direction to allow him to work as Incharge, D.E.O. Raigarh and pay the salary accordingly with consequential benefits.

2. The indisputable facts in nutshell are that the petitioner vide order dated 30.09.2005 was transferred from Raigarh to Bilaspur. The respondent no. 3 was at that point of time posted at Raigarh. Being aggrieved, the petitioner filed a Writ Petition being W.P. No. 4919/2005 in this Court. This Court, vide order dated 05.10.2005 directed status quo as existed on 5.10.2005 to be maintained. By virtue of the said order, the petitioner, it appears, continued at the place of Raigarh. The respondent no. 3 while working as Principal, D.E.T.I. Pendra Road, was suspended. However, the respondent no. 3 was addressed as Incharge, District Education Officer vide order dated 29.04.2006 (Annexure P/3). The respondent no. 3 filed a petition being W.P. No. 5221/2006 for grant of subsistence allowance from October 2005 onwards during the period of suspension. This Court, after recording the order dated 4.7.2006, issued by the Under Secretary, Government of Chhattisgarh, School Education Department, the District Educaton Officer and other authorities were directed to release the subsistence allowance to the respondent no. 3 Shri T.C.Patel in accordance with law within a period of 15 days from the date of receipt of a copy of the order.

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3. The State Government, vide order dated 28.11.2006 initiated a departmental enquiry against the petitioner stating that the payment of subsistence allowance could not be made to the respondent no. 3, asto why departmental action should not be initiated against him. Accordingly, the petitioner was suspended. During the pendency of enquiry, the petitioner filed this petitioner on several grounds. Firstly, that the petitioner was not the officer concerned to release the subsistence allowance to the respondent no. 3, secondly, all the orders dated 30.11.2006, 16.10.2006, 09.11.2006, 16.11.2006 and 15.112006 are conflicting and confusing.

4. It is admitted position that the employee against whom a departmental enquiry is pending consideration can be placed under suspension under the provisions of Rule 9(1)(a) of C.G. Civil Services (Control, Classification and Appeal) Rules, 1966. Thus, the grounds raised by the petitioner are the matter of investigation and enquiry. The petitioner can very well raise the same ground in disciplinary enquiry in order to establish his case. This Court cannot examine the factual aspect of the matter for which a disciplinary proceeding is contemplated. The impugned order of suspension passed under section 9(1)(a) of M.P. Civil Services (Control, Classification and Appeal) Rules, 1966 which clearly provides that the appointing authority or any authority to which it is subordinate or the disciplinary authority or any other

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authority empowered in behalf of Government by general or special order, may place the government servant under suspension where a disciplinary proceeding against him is contemplated or is pending.

5. It is well settled principle of law that the suspension is temporary and it does not involve punishment with evil consequences. Suspension means a temporary deprivation of the functions not amounting to any reduction of his rank or his status. The employee under suspension continues to be a Government Servant, he is not permitted to work keeping in view pendency of departmental enquiry to avoid undue influence in the proceedings of the departmental enquiry and likely tampering with on records. At this stage is it not necessary to go into the charges levelled against the petitioner because it may prejudice the case of the parties in the pending departmental enquiry (See. Smt. Philomina Ekka Vs State of C.G. & Others[1]).

6. I do not propose to examine the allegations made in the suspension order as the enquiry is proposed to enquiry the facts. This order will not come in the way of enquiry, if any, against the petitioner on merit. The enquiry authority may proceed with the enquiry uninfluenced by this order.

7. In view of foregoing, the petition is dismissed. No order as to costs.

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8. Consequently, M(W)P No. 4909/2006, application for grant of ad-interim relief, stands disposed of.

Sd/-
Satish K. Agnihotri
Judge

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1. 2006 (2) C.G.L.J. 64

Amit